IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.185/1997
Reserved on.31.5.2007
Decided on.25.7.2007

Amin Chand **…Appellant.**

Versus

Chuni Lal **…Respondent**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : Mr. Sanjay Dutt Vasudeva, Advocate.

For the respondents Mr. Rahul Mahajan, Advocate.

Rajiv Sharma, J.

By way of this second appeal, a challenge has been laid to the judgment and decree passed by the District Judge, Kangra at Dharamshala dated 12.5.1997 in civil appeal No. 135-N/XIII/95.

The brief facts necessary for the adjudication of the present appeal are that the respondent-plaintiff (hereinafter referred to as the plaintiff for convenience sake) had filed the suit in the court of Sub Judge Ist Class, Court No.II, Nurpur, District Kangra, H.P. on 31.12.1993. The suit was filed for possession of the land as detailed in the plaint. The trial court had framed the following issues:

1. **Whether the plaintiff is owner of the suit land? OPP.**
2. **If issue No.1 is proved in affirmative, whether the defendants in the month of October, 1983 during the settlement forcibly dispossessed the plaintiff? OPP**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

3. **Whether the suit of the plaintiff is not legally maintainable? OPD**
4. **Whether the plaintiff has no locus standi to file the suit (present suit)? OPD.**
5. **Whether the plaintiff is estopped to file the suit by their act and conduct? OPD.**
6. **Whether the suit is bad for mis-joinder of necessary parties? OPD.**
7. **Whether the suit has become time barred? OPD**
8. **If issue No.1 is not proved, whether the defendant has become owner of the suit land by way of adverse possession being in possession since 1968? OPD.**
9. **Relief.**

The trial court had returned the following findings on the issues framed:

Issue No.1 Yes.
Issue No.2 Yes
Issue No.3 No
Issue No.4 No
Issue No.5 No
Issue No.6 No
Issue No.7 No
Issue No.8 No.
Relief Suit is decreed as per operative part of the judgment.

The trial court had decreed the suit on 31st May, 1995 against the defendants for possession by demolition of house or any other kind of structure existing on the suit land. The defendants filed an appeal before the District Judge, Kangra at Dharamshala on 21.9.1995. The District Judge, Kangra had framed the following points for determination:

1. **Whether the plaintiff is owner of the suit land and is entitled to the relief as claimed?**
2. **Whether the defendants have become owners by way of adverse possession, as prayed?**

3. Relief.

The District Judge had returned the following findings on the points formulated:

Point No.1 Yes.

Point No.2 No.

Relief. Appeal dismissed as per operative part of the judgment.

The learned District Judge had dismissed the appeal on 12.5.1997. The Court had admitted the appeal on the following substantial question of law:

1. **Whether the judgment and decree passed by court below is vitiated due to non-appreciation of relevant evidence on record?**
2. **Whether the findings of the court below are erroneous which rendered the judgment and decree null and void whereby it has wrongly determined the plea of the adverse possession against the appellant/defendant?**

Mr. Sanjay Dutt Vasudeva, Advocate had strenuously argued that the judgment of the appellate court whereby he had affirmed the judgment and decree of the trial court dated 31.5.1995 is not sustainable in the eyes of law.

Mr. Rahul Mahajan, Advocate had supported the judgment and decree passed by the District Judge on 12.5.1997.

I have heard the learned counsel for the parties and perused the record.

The plaintiff PW-1 had tendered/proved Ex.P-1 jamabandi for the year 1977-78, Ex.P-2 Missal Hakiat for the year 1982-83 Ex.P-3, jamabandi for the year 1989-90 and Ex.P-4, jamabandi for the year 1989-90. The defendant i.e. DW-1 and DW-2 had tendered/proved Ex.D-1 aksh tatima, Ex.D-2, jamabandi for the year 1989-90, Ex.D-3 also jamabandi for the year 1989-90 and Ex. D-4 Khasra Girdawari.

The plaintiff had appeared as PW-1 and testified that he is owner of the suit land which was allotted to him by the Government of H.P. He had further testified that right from the allotment of land till settlement operation he remained in possession of the same. The defendant Shri Chand appeared as DW-1 and deposed that the disputed land is about 13 Marlas and the same is in their possession since 1975. DW-2, Rumal Chand had testified that he had seen the disputed land on which the defendants had constructed their house but he had admitted that the land was allotted to the plaintiff. The land in question was allotted to the plaintiff in the year 1975 and the plea raised by the defendants that they had constructed the house in the year 1968 is untenable. In Ex.P-1, the plaintiff Chuni Lal has been recorded as Pattedar. In Ex.P-2 Missal Hakiat for the year 1982-83, the plaintiff is recorded as owner but in the column of cultivation, the father of the defendants has been recorded as Kabiz in khasra No.1211 and 1213 and the same position is recorded in Ex.P-3. Ex.P-4 shows that Khasra No. 1210 is owned and cultivated by the plaintiff himself. Ex.D-2, jamabandi for the year 1989-90 as placed on record by the defendants reflects that khasra No.1210 is shown to be in possession of the plaintiff whereas khasra No. 1211 and 1213 are though owned by the plaintiff, but in the column of cultivation, the name of the father of the defendants have been mentioned as Kabiz. There is nothing on record to suggest that how entries of Kabiz came to be entered in the revenue record.

The plea of adverse possession raised by the defendants is not sustainable as no ingredients for proving the adverse possession were pleaded and proved by the defendants. The plaintiff is found to be in possession of the suit land on the basis of the revenue entries and as per the statement of the witnesses and the same being findings on fact are not liable to be interfered by the Court. There is no substantial question of law

involved in the second appeal. The findings recorded by the courts below need not be interfered by the Court.

Accordingly this second appeal is dismissed with no order as to costs.

(Rajiv Sharma), Judge

July 25,2007
Awasthi